

DOCKET NO: 5244-0109-2

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
AVERY FONG, ET AL : EXAMINER: CHANKONG, DOHM
SERIAL NO: 09/440,645 :
FILED: NOVEMBER 16, 1999 : GROUP ART UNIT: 2152
FOR: APPLICATION UNIT :
MONITORING AND REPORTING
SYSTEM AND METHOD WITH USAGE
DATA LOGGED INTO A MAP
STRUCTURE

PETITION TO RESET DATE BASED ON FAILURE TO RECEIVE EXAMINER'S
ANSWER TO APPEAL BRIEF

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

Applicants, through counsel of record, respectfully request that the mail date of the Examiner's Answer to Appeal Brief of November 27, 2007 be reset as said action was not present in the Image File Wrapper when the relevant "e-notification" was sent on November 27, 2007. The facts concerning this matter are as follows:

Applicant's Representative is a participant in the Office's Beta "e-Office Action Program", wherein Applicant's Representative receives a once daily e-mail notification of all applications in which outgoing PTO correspondence has been issued in lieu of paper copies of the notices themselves. The Image File Wrapper for each indicated application is then checked and all outgoing notifications/actions are downloaded, which is registered by the PTO as "Electronic Review" in the Transaction History of each application. In the instant application, during a follow up to a Status Check filing submitted on April 15, 2008,

Applicant's Representative checked their relevant docketing PTO mail records, their file wrapper and Private PAIR. There was no Examiner's Answer in Applicant's file wrapper, and there was no entry for receipt of the Examiner's Answer in Applicant's PTO mail records.

Applicant's Representative also directed that the USPTO/PAIR Team be contacted. Tony Uranga, Program Analyst with SIRA (571-272-3416) was called and confirmed that on November 27, 2007, when the relevant "e-notification" was sent, the only item available for downloading from the IFW was the List of References cited by applicant and considered by examiner and the Miscellaneous Action with SSP. The Examiner's Answer to Appeal Brief in this case was not uploaded into PAIR until November 28, 2007 at 9:34 a.m. Further, with respect to the PALM history showing an Electronic Review of November 28, 2007, Mr. Uranga indicated that even though the electronic review indicates an 11/28/07 date, the code was using the date that the entry was put into PALM (always the next day after midnight) and not the actual review day. In the instant application, it has been confirmed that Applicant's Representative's Docketing Department went into PAIR on 11/27/07 to review the IFW and only saw the List of References cited by applicant and considered by examiner and the Miscellaneous Action with SSP. Further, since Applicant's Representative's Docketing department had also downloaded these two items that were available on 11/27/07, no courtesy post card reminder was sent for the Examiner's Answer to Appeal Brief. Accordingly, Applicant's Representative received no notification from the USPTO whatsoever of the Examiner's Answer to Appeal Brief.

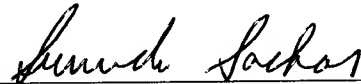
Applicant's Representative also confirms that the Examiner's Answer to Appeal Brief was not received via mail in paper format, nor were they made aware of it via any other manner until the follow up to the Status Check submitted on April 15, 2008. In light of the foregoing, it is requested that the mail date of the Examiner's Answer to Appeal Brief date be

reset to April 15, 2008, and Applicant's Representative further concurrently submits herewith a Reply Brief in timely response thereto.

The undersigned petitioner declares further that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
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